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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
087811,898	03/05/97	EBERLE III	H HWE-103A

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PM31/0120

EXAMINER	
LEV, B	
ART UNIT	PAPER NUMBER
3623	HB

DATE MAILED: 01/20/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/811,898	Applicant(s) Eberle
	Examiner Bruce A. Lev	Group Art Unit 3623

Responsive to communication(s) filed on Amendment B of December 5, 1997

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

Claim(s) 23-27 is/are pending in the application.
 Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 23-27 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3623

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 lines 13-16 state “attachment means established by...and there are at least two vertical support members attached to said top element” is vague and indefinite since it is unclear whether the said at least *two* vertical support members are the same as the said at least one vertical support member attached to the underside of the top element (lines 6-7), and it is unclear whether the said at least *two* vertical support members are part of the attachment means.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Art Unit: 3623

3. Claims 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Erwin et al 5,660,016.

As concerns claim 23 Erwin et al disclose an anchoring biscuit device 90 comprising a first substantially flat horizontal top element having a generally biscuit-shaped top view configuration, and an imaginary center line; at least one vertical support member, inclusive of 104, attached to the underside of the top member along the imaginary center line and extending downward therefrom for a predetermined length; and attachment means inclusive of a screw hole located in substantially the center of the top element, wherein there are two vertical support members (viewed as the two separate distal portions of 104) attached to the top element, the said two vertical support members being flat, in the same plane and located on opposite sides of the screwhole thereby permitting the insertion of the screw through the top element and between the two vertical support members.

As concerns claim 24 Erwin et al disclose the top element and the vertical support members being uni-structurally formed.

4. Claims 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellinwood 2,362,252.

As concerns claims 23,25, and 26 Ellinwood discloses an anchoring biscuit device comprising a first substantially flat horizontal top element having a generally biscuit-shaped top view configuration, inclusive of members 25, and an imaginary center line and symmetrical

Art Unit: 3623

opposite sidewalls (shown in figures 3 and 4) in the shape of a circular arc and opposite flat endwalls; at least one vertical support member, inclusive of 24, attached to the underside of the top member along the imaginary center line and extending downward therefrom for a predetermined length; and attachment means inclusive of a screw hole, inclusive of 31 and the hole housing fastener 28, formed at said top element and extending through two vertical support members (viewed as the two separate distal portions of 24) attached to the top element, the said two vertical support members being flat, in the same plane and located on opposite sides of the screwhole thereby permitting the insertion of the screw through the top element and between the two vertical support members.

As concerns claims 24 and 27 Ellinwood discloses the top element and the vertical support members being uni-structurally formed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erwin et al in view of Bischof 5,529,428.

Art Unit: 3623

Erwin et al disclose the invention except for the opposite sidewalls being in the shape of a circular arc. However, Bischof shows an anchoring device having sidewalls being in the shape of a circular arc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sidewalls of Erwin et al by forming them in the shape of a circular arc, as taught by Bischof, in order to reduce friction between the anchoring biscuit and the boards to thereby increase the ease as to which the anchoring biscuit can be attached and removed.

Response to Amendment

4. Applicant's remarks filed December 5, 1997 have been fully considered, however, the applicant's amendment including the cancellation of claims 1,2,3,7,10,11,21 and 23, and the addition of new claims 23-27 necessitated new grounds of rejection. Therefore, the remarks are now considered moot.

Conclusion

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

Art Unit: 3623

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

bl



December 12, 1997

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
GROUP 3600